

## 21.0.0 Estate Recovery Program

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### **21.1.0 Estate Recovery Program Definition**

The state seeks repayment of certain correctly paid home health and long-term care benefits by:

1. Liens against a home.
2. Claims against estates.
3. Affidavits.
4. Voluntary recoveries.

These procedures are the Estate Recovery Program (ERP). No ERP recovery may be made for MA services provided before 10-01-91.

### **21.2.0 Recoverable Services**

Not all services provided by MA are recoverable. Recoverability depends on what was provided and the client's age and residence when s/he received the benefit.

Following are the services for which ERP may seek recovery:

1. All Medicaid services received while living in a nursing home on or after October 1, 1991.
2. All Medicaid services received while institutionalized in an inpatient hospital on or after July 1, 1995.
3. Home health care services received by clients age 55 or older on or after July 1, 1995 consisting of:
  - a. Skilled nursing services.
  - b. Home health aide services.
  - c. Home health therapy and speech pathology services.
  - d. Private duty nursing services.
  - e. Personal care services received by clients 55 or older on or after April 1, 2000.
4. All home and community-based waiver services (COP Waiver, CIP 1A, CIP 1B, CIP II, Brain Injury Waiver and Community Supported Living Arrangements) received by clients age 55 or older on or after July 1, 1995 and:
  - a. Prescription/legend drugs received by waiver participants.
  - b. Benefits paid associated with a waiver participant's inpatient hospital stay. These include inpatient

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### 21.2.0 Recoverable Services (cont.)

services that are billed separately by providers and that are non-covered hospital services.

5. In pilot counties, Family Care services received by clients age 55 or older on or after February 1, 2000 and:
  - a. Prescription/legend drugs received by waiver participants.
  - b. Benefits paid associated with a waiver participant's inpatient hospital stay. This includes inpatient services that are billed separately by providers and that are non-covered hospital services.
6. Costs that may be recovered through a lien are:
  - a. Medicaid costs for services received on or after October 1, 1991 during a nursing home stay.
  - b. b. Medicaid costs of all other recoverable services as listed in Items 1-5 that are received on or after April 1, 2000 by clients 55 or older as of the date of the service.

#### 21.2.1 QMB

Payments for the Qualified Medicare Beneficiary (QMB) Medicare Part B premiums are not recoverable through ERP.

QMB co-payments and deductibles paid by Medicaid are recoverable through ERP. They are only recoverable if the co-payment or deductible was used to pay for a Medicaid service that is recoverable.

### 21.3.0 Nursing Home Defintion

For ERP purposes, "nursing home" is a place that provides 24-hour services, including room and board, to three or more unrelated residents who, because of their mental or physical condition, require nursing or personal care more than seven hours a week. This includes skilled nursing (SNF) and intermediate care facilities (ICF), in-patient psychiatric facilities and facilities for the developmentally disabled (FDD). "Nursing home" does **not** include:

1. A convent or facility owned or operated exclusively by and for members of a religious order that provides reception and care or treatment.
2. A hospice, as defined in §50.90(1) Wis. Stats., that directly provides inpatient care.

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### 21.3.0 Nursing Home Definiton (cont.)

3. Community Waiver residence.
4. Institutions for mental disease (IMD).

### 21.4.0 Liens

DHFS will **not** file a lien on:

1. Nonhome property.
2. Life estates.
3. Homestead property sold by land contract.
4. Property outside Wisconsin (See 21.4.2).
5. A mobile home or the land it sits on when the client does not own the land.

DHFS may file a lien on:

1. A home and all property used and operated in connection with that home.
2. A mobile home and the land it sits on, when the client owns the land.
3. A home placed in a revocable trust (See 21.4.8).

When a home is sold, DHFS uses the lien to recover certain payments for MA services provided as listed in 21.2.0. The lien's value is "open ended." The lien's value increases as the amount of recoverable MA services paid accumulates.

Payment of the lien is made directly to DHFS. Do not accept any payments relating to liens filed by DHFS.

Contact the ERP Liens Specialist if the client's home is sold within 45 days after the Notice of Intent to File a Lien is completed.

The lien has no effect until filed.

**Example.** Mr. A applies for MA on 03-06-95. He has a home and his circumstances require a lien. The ES agency sends a Notice of Intent to File a Lien on 03-10-95. ERP staff can not file a lien until 04-24-95 because of the required 45 day waiting period. Mr. A's legal representative sells the property on 04-10-95. Recovery of Mr. A's MA payments by a lien on that property is not possible as the property was sold before a lien was filed. The ESA contacts the ERP Lien Specialist to report on the home's sale.

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### 21.4.1 Notice of Intent to File a Lien

Complete a Notice of Intent to File a Lien (DES 2339) when an MA client meets **all** the following criteria.

1. Lives in a nursing home or inpatient hospital and is required to contribute to the cost of care.
2. Has a home (11.0.0).
3. Is not expected to return to live at that home.

Base this decision on the person's medical condition. His/her physician's statement that s/he can reasonably be expected to return home is sufficient support for the person's claim that s/he will return.

The physician's statement should include a description of the diagnosis and prognosis for the client. A form asking for a physician to merely indicate by checking a box, etc., that there is a reasonable expectation that the institutionalized individual will return home is not acceptable or sufficient. Allow the physician a reasonable amount of time to provide this information.

When there is contradictory information (from a nursing home social worker, discharge planner, etc.) concerning the reasonable expectation of returning home, or you question the reasonableness of the statement by the client, family, guardian, power of attorney, or physician, that the person will return home, consult with the Estate Recovery Program's Lien Specialist. Do NOT file a Notice of Intent to File a Lien until ERP staff have checked with the Department of Health and Family Services' medical consultants. If ERP determines there is not a reasonable expectation, ERP will send you a letter listing the reasons for this decision. At that point, if all of the other conditions described in this section are met, file the Notice of Intent to File a Lien.

4. None of these relatives of the client reside in that home.
  - a. Spouse.
  - b. Child who is:
    1. Under age 21, or
    2. Blind, or
    3. Disabled.

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### 21.4.1 Notice of Intent to File a Lien (cont.)

- c. Sibling, if the sibling:
1. Has an equity interest in the home; **and**
  2. Lived in the home continuously beginning at least 12 months before the client's nursing home or hospital admission.

When you have completed the Notice:

1. Mail or give the original to the client or his/her authorized representative.
2. Send a copy to the ERP office.
3. Attach a legible copy of the latest property tax bill or a copy of the property deed (if available) for any homestead property reported. This gives ERP staff the information necessary to obtain the legal description needed to file a lien.
4. File a copy in the case record.

ERP staff delays further action until the period given the client to request a fair hearing passes. If no hearing is requested, ERP staff will file a lien on the property with the Register of Deeds for the county in which the property is located. If a hearing is requested, a lien is not filed until approved by a hearing decision.

### 21.4.2 Out of State Property

If an MA client has property outside Wisconsin that would be subject to a lien if located in Wisconsin, provide the same data you would provide on Wisconsin property. Do not give a Notice of Intent to File a Lien.

DHFS may not file liens against out-of-state properties. However, ERP staff wants data on these cases to assist in negotiating lien agreements with other states.

### 21.4.3 Returns Home to Live

If, despite expectations, the resident is discharged from the nursing home or inpatient hospital, to return home to live, the lien must be released. Notify the ERP. ERP staff will release the lien.

### 21.4.4 Change in Circumstances

At review and other times, at local option, reexamine the circumstances (See 21.4.0) of the client's home. If conditions change such that a lien must be filed, complete a Notice of Intent to File a Lien.

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### 21.4.5 Special Cases

ERP staff applies special consideration for the following two case situations.

1. When a child (age 21 or older) of the client lives in the home, DHFS is able to file a lien. It will not enforce the lien until that child moves or the home is sold if s/he:
  - a. Lived in the home with the client for at least two years before the resident's admission to the nursing home or hospital, **and**
  - b. Assisted the parent such that s/he helped delay the client's admission.
2. When a sibling of the client (other than a sibling described in 21.4.1) lives in the home, DHFS is able to file a lien. It will not enforce the lien until that sibling moves or the home is sold if the sibling resided in the home for at least 12 months before the client's admission to the nursing home or hospital.

Alert the ERP when your client meets either of these two case situations.

### 21.4.6 Adjustment for Burial Trust

DHFS may adjust the amount of its lien to allow a client to use proceeds from the sale of the home to establish or supplement a burial trust. ERP staff will review each situation individually. Refer any questions regarding lien satisfaction amounts or lien releases to the ERP staff.

### 21.4.7 Administrative Hearing: Liens

A client or his/her representative may request an administrative hearing if s/he feels the statutory requirements for imposing the lien have not been met. The Economic Support Agency (ESA) attends the hearing to explain the decision to file the Notice of Intent to File a Lien. The only issue at the hearing will be whether the following requirements were satisfied:

1. The client has an ownership interest in a home.
2. The client resides in a nursing home or hospital.
3. The client cannot **reasonably** be expected to be discharged from the nursing home or hospital and return home to live.

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### 21.4.7 Administrative Hearing Liens (cont.)

4. None of the following lawfully reside in the home:
  - a. The client's spouse.
  - b. The client's child who is:
    1. Under age 21, **or**
    2. Disabled, **or**
    3. Blind.
  - c. The client's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least 12 months before the client was admitted to the nursing home or hospital.

The request for an administrative hearing must be made in writing directly to the Division of Hearings and Appeals (DHA) at:

Department of Administration  
Division of Hearings and Appeals  
P.O. Box 7875  
Madison, WI 53707-7875

The request must be clearly marked "Medicaid Lien" and must be filed within 45 days of the mail date on the Notice of Intent to File a Lien. The date the written request is received by DHA is the date the hearing request is considered filed.

### 21.4.8 Homes Placed in Revocable Trusts

If a MA client places his/her home in a revocable trust (11.0.0); s/he retains an ownership interest in the home. Complete a Notice of Intent to File a Lien if the client meets the conditions for a lien to be filed (See 21.4.1).

## 21.5.0 Estate Claims

DHFS recovers MA benefit costs from the client's estate.

No claim is made on the client's spouse's estate for a MA client's costs.

When DHFS learns of the death of a client, it files a claim at probate court in the amount of MA recoverable benefits.

The probate court will not allow a claim on the estate to be paid if any of the following survives the client:

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### 21.5.0 Estate Claims (cont.)

1. A spouse.
2. A child, if the child is:
  - a. Under age 21, **or**
  - b. Blind, **or**
  - c. Disabled.

**Do not negotiate a settlement, accept any funds, or sign any release for estate claims that have been filed by DHFS. ERP staff should be notified if a claim is filed by the county against an estate for recovery of overpayments or incorrect MA benefits, for those 55 years of age or older or for any client who has resided in a nursing home.**

Refer any questions about specific estate claims to the ERP staff.

#### 21.5.1 Waiver of Estate Claim

In estates of clients who die on or after April 1, 1995, an heir or beneficiary of the deceased client's estate may apply for a waiver of an estate claim filed by ERP. To be successful, the person applying for the waiver must show one of these three hardships exist:

1. The waiver applicant would become or remain eligible for AFDC, SSI, FS or MA if ERP pursued the estate claim.
2. The deceased client's real property is part of the waiver applicant's business (for example, a farm) and the ERP recovery claim would affect the property and result in the waiver applicant's loss of his/her means of livelihood.
3. The waiver applicant is receiving general relief or veteran's benefits based on need under §45.351(1) Wis. Stats.

The waiver application must be made in writing within 45 days after the day:

1. ERP mailed its recovery claim to the probate court or its affidavit to the heir, **or**
2. ERP mailed its notice of waiver rights, whichever is latest.



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### 21.5.1 Waiver of Estate Claim (cont.)

The waiver application must include these points:

1. Relationship of the waiver applicant to the deceased client.
2. The hardship under which the waiver is requested.

ERP staff must issue a written decision granting or denying the waiver request within 90 days after the waiver application is received by ERP. In determining its decision, ERP must consider all information provided to it within 60 days of its receipt of the waiver application.

### 21.5.2 Notice of Hardship Waiver Rights

ERP will provide notice of the waiver provisions to the person handling the deceased client's estate. If ERP is not able to determine who that person is, the notice will be included with the claim when ERP files it with the claim court.

The person handling the estate is then responsible for notifying the decedent's heirs and beneficiaries of the waiver provisions.

### 21.5.3 Administrative Hearings: Hardship Waivers

If a waiver application is denied, the waiver applicant may request an administrative hearing. ERP staff will attend the hearing to defend their denial of the hardship waiver.

The hearing request must be made within 45 days of the date the ERP decision was mailed.

The hearing request must:

1. Be made in writing.
2. Identify the basis for contesting the ERP decision.
3. Be made to the Division of Hearings and Appeals (DHA) at:

Department of Administration  
Division of Hearings and Appeals  
P.O. Box 7875  
Madison, WI 53707-7875

The date the request is received at DHA is used to determine the timeliness of the request.

ERP staff will maintain DHFS' claim in the estate pending

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### 21.5.3 Administrative Hearings: Hardship Waivers (cont.)

the administrative hearing decision. If collections are made and the waiver is ultimately approved, those funds will be returned.

To introduce evidence at a hearing not previously provided to DHFS, the applicant must mail that evidence to DHFS with a postmark at least seven working days before the hearing date.

### 21.5.4 Personal Representative's Report

The personal representative of the estate of an MA client must notify DHFS that the estate is being probated [§859.07(2), Wis. Stats.]. The notification must be by certified mail and include the date by which claims against the estate must be filed.

### 21.5.5 Home as Part of the Estate

When a home **is part of the estate**, the court may impose a lien equal to the MA payments even if one of these persons is alive:

1. The spouse.
2. A child under age 21.
3. A disabled or blind child of any age.

Recovery through the lien will not be enforced as long as any of these persons meet the criteria and is alive.

**Example.** Mr. A dies. A claim on his estate is filed and the estate includes his home. His spouse is deceased and he has no blind or disabled child. He has a child, age 19. This child lives outside Mr. A's home. A lien is placed on the home but cannot be enforced because the minor child is still alive. The child later turns 21. As there is then no living spouse, child under 21, or disabled or blind child, the lien can be enforced.

DHFS will take a lien in full or partial settlement of an estate claim against the portion of an estate that is a home if:

1. A child, of any age of the deceased client:
  - a. Resides in the client's home, **and**
  - b. That child resided in that home for at least 24 months before the client entered the nursing home, hospital, or received home and community-based waiver services, **and**

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### 21.5.5 Home as Part of the Estate (cont.)

- c. That child provided care that delayed the client's move to the nursing home, hospital, or his/her receipt of home and community-based waiver services.

#### 2. A sibling of the deceased client:

- a. Resides in the client's home, **and**
- b. Resided in that home for at least 12 months before the date the client entered a nursing home, hospital, or received home and community-based services.

The lien filed in one of these two instances will be payable at the death of the child or sibling or when the property is transferred, whichever comes first.

However, if the child or sibling sells the home covered by the DHFS lien, and uses the sale proceeds to buy another home to be used as that child's or sibling's primary residence, then:

1. DHFS will transfer the lien to the new home if the amount of the child or sibling's payment or down payment for the new home is equal to or greater than the proceeds from the original home.
2. If the down payment on the new home is less than the proceeds from the sale of the original home, DHFS will recover the amount of the proceeds above the down payment, but no greater than the lien amount. If there is an amount in the lien still not satisfied, DHFS will file a lien for the remaining amount on the new home.

### 21.5.6 Affidavits in Small Sum Estates

Heirs of a deceased MA client must notify ERP before transferring any of the deceased funds through a Transfer by Affidavit (\$20,000 and Under) (§867.03, Wis. Stats.). The heir must send a copy of the affidavit to ERP by certified mail, return receipt requested. S/he must wait ten days from the delivery date on the return receipt card before transferring the deceased's funds. Property considered to be the home of a MA client who passed away after September 1, 2001 and is being transferred by an affidavit is subject to a lien if the state's claim cannot be satisfied through available liquid assets. The DHFS may not enforce the lien while any of the following survive:

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### 21.5.6 Affidavits in Small Sum Estates (cont.)

1. Spouse,
2. Child who is:
  - a. Under age 21, **or**
  - b. Blind, **or**
  - c. Disabled.

If an heir claims the patient account fund or transfers the deceased's funds from a financial institution, ERP will send an affidavit to the heir to recover any funds remaining after burial and estate administration costs have been paid. Funeral costs are limited to those expenses connected with the funeral service and burial. A marker for the grave is considered a burial cost. Memorials and/or donations to churches, organizations, persons, or institutions are not considered burial costs.

ERP will recover any funds that remain from a burial trust after costs have been paid.

Direct specific questions about questionable allowable costs to ERP staff.

### 21.5.7 Patient Fund Account

Nursing homes are required to notify ERP when a MA client dies with money left in his/her nursing home patient fund account if s/he has no surviving spouse or minor or disabled child.

ERP will claim from the nursing home any funds remaining in the patient account after payment of funeral and burial expenses and outstanding debts from the last month of illness that are not chargeable to MA.

### 21.5.8 Voluntary Recovery (ERP)

When a client age 55 or older wishes to pay an amount to MA to maintain MA eligibility, prepay a MA deductible, or reduce a potential claim in an estate, forward the payment to ERP. First check, BVCI to make sure there is not an outstanding MA claim for an overpayment since the money should be applied to an overpayment first. Voluntary payments, except for prepayment of a deductible may only be up to the amount of MA paid to date. (See 21.10.0 for voluntary recoveries for clients under age 55.)

The check or money order should be made payable to DHFS.

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### 21.5.8 Voluntary Recovery (ERP) (cont.)

Mail the payment to:

Estate Recovery  
6406 Bridge Road  
Madison, Wisconsin 53784-0013

With the payment, include:

1. Documentation that the payment is voluntary.
2. The client's name and MA ID number.
3. Name and address of the person who should receive the receipt.

These refunds will be credited to the client and will be used to offset any claim that may be filed in the client's estate.

Incentive payments of 5% will be paid to the ESA for refunds.

See the IMM, Ch. II, Part A, 3.2.0 for recovery of improper benefits.

Advise heirs and beneficiaries of deceased clients who wish to make a voluntary refund to call ERP staff.

### 21.6.0 Match System

ERP maintains the Estate Recovery Database. Information you submit on the Estate Recovery Disclosure Form and data received through the SSA State Data Exchange (SDX) tape (for SSI/MA clients) is on the database.

The database is compared to the death record files of the Division of Health Care Financing, Vital Records and State Registrar Section.

When a match shows an MA client or his/her surviving spouse has died, a report record is produced. ERP staff check the report against lists of new probate proceedings sent monthly by county registers in probate. This is a back up to the requirement that DHFS be notified of the last date for filing claims.

### 21.7.0 Notify Clients

Provide a copy of the Wisconsin Medicaid Estate Recovery Program brochure (PHC 13032) to every MA client 54 1/2 years old or older or institutionalized at application and review. Have each client or his/her representative read the notice of liability on the CAF ("Recovery of Medical

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### 21.7.0 Notify Clients (cont.)

Benefits”). S/he acknowledges understanding of this notice when signing the CAF.

### 21.8.0 Disclosure Form

Complete an Estate Recovery Program Disclosure Form whenever a MA client:

1. Enters or resides in a nursing home, **or**
2. Enters or resides in an inpatient hospital and is required to pay a MA cost of care liability, **or**
3. Becomes 55 years old.

Do this even if s/he has zero assets.

Complete the form with information about the client, his/her spouse, and his/her children that are blind, disabled, and under age 21.

Attach a legible copy of the latest property tax bill or a copy of the property deed for any homestead property reported if possible. This may give ERP staff the property’s legal description needed to file a lien.

Request the client or his/her agent to sign the completed form. If s/he will not sign the form:

1. Sign the form at the “Client Signature” line.
2. Note near your signature that you reviewed the data with the person or his/her agent. Indicate:
  - a. That s/he did or did not agree the data was accurate.
  - b. The reason s/he did not sign.

In a mail-in application situation, document if the form was not returned or was returned without a signature.

Send the completed form to the ERP. File a copy in the case record.

Update this form unless there is a substantial change in circumstances (for example, an inheritance).

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### 21.9.0 ERP Contacts

The ERP address is:

Estate Recovery Program Section  
Division of Health Care Financing  
P.O. Box 309  
Madison, WI 53701-0309

For general information regarding ERP, refer clients to Recipient Services at 1-800-362-3002.

Direct case-specific questions about:

1. Estate recovery disclosure forms and liens to the Lien Specialist, (608) 264-6758.
2. For estates of \$20,000 or less, provide the phone number of the “**Affidavit Help Line,**” **(608) 264-6756**, to heirs of a deceased clients who have questions about ERP. The Help Line provides recorded messages that answer the most frequently asked questions regarding small sum estates. It also provides the caller with an opportunity to either leave a message or talk to ERP staff.
3. Probated estate claims and voluntary ERP payments to the appropriate Estate Recovery Specialist. For the counties listed contact:

Estate Claims Specialists		
(608)264-6757	(608)266-6777	
Bad River Tribal	Adams	Iowa
Calumet	Ashland	Iron
Chippewa	Barron	Manitowoc
Clark	Bayfield	Marathon
Columbia	Brown	Marinette
Crawford	Buffalo	Marquette
Eau Claire	Burnett	Menominee
Jackson	Dane	Monroe
Jefferson	Dodge	Oconto
Juneau	Door	Oneida
Kenosha	Dunn	Oneida Tribal
Kewaunee	Florence	Outagamie
Lac du Flambeau Tribal	Fond du Lac	Ozaukee
LaCrosse	Forest	Pepin
Lafayette	Grant	Pierce
Langlade	Green	Polk
Lincoln	Green Lake	Portage

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**21.9.0 ERP Contacts (cont.)**

<b>Estate Claims Specialists</b>	
<b>(608)264-6757</b>	<b>(608)266-6777</b>
Milwaukee Racine Richland Rock Rusk Sauk Sawyer Shawano Sheboygan St. Croix Stockbridge-Munsee Tribal Walworth Washburn Washington Waukesha Waupaca Waushara Winnebago Wood	Price Red Cliff Tribal Taylor Trempeleau Vernon Vilas

**21.10.0 Voluntary Recovery  
(Not ERP)**

Accept payments from a client **under age 55** made for purposes of MA eligibility or prepaying a MA deductible.

Instruct the client to make the payment payable to your ESA. Report the receipt on the Community Aids Reporting System (CARS) on Line 909.

**21.11.0 Incentive  
Payments**

DHFS will return to local agencies 5% of collections made through a lien, voluntary payments and probated estate recoveries. We will pay this incentive to the last county/tribal agency certifying the client for MA.

The payments are discretionary. DHFS will make them based on county/tribal compliance with program requirements.

**21.12.0 Other Programs**

ERP also recovers for Community Options Program (COP), Wisconsin Chronic Disease Program (WCDP) and MA and non-MA Family Care.



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12.13.0 Recoverable Services Chart

	<b>Nursing Home Resident MA</b>	<b>Hospital Inpatient MA</b>	<b>Community Resident MA</b>	<b>MA Waiver</b>	<b>FC MA FC-Non MA</b>
Age	Any age	Any Age	55 years of age or older	55 years of age or older	55 years of age or older Any age NH/Hospital
Services on or after	10/01/91	07/01/95	07/01/95	07/01/95	2/1/00
Recoverable Services	<ul style="list-style-type: none"> <li>All MA benefits paid while residing in nursing home</li> </ul>	<ul style="list-style-type: none"> <li>All MA benefits paid while residing as an inpatient in a medical institution (hospital)</li> </ul>	<ul style="list-style-type: none"> <li>Home health skilled nursing</li> <li>Home health aide services</li> <li>Home health therapy and speech pathology</li> <li>Private duty nursing</li> <li>Personal care services (received on or after 4/1/00)</li> </ul>	<ul style="list-style-type: none"> <li>Home health skilled nursing</li> <li>Home health aide services</li> <li>Home health therapy and speech pathology</li> <li>Private duty nursing</li> <li>All waiver services</li> <li>Prescription/legend drugs</li> <li>Benefits paid associated with an inpatient hospital stay</li> <li>Personal care services (received on or after 4/1/00)</li> </ul>	<ul style="list-style-type: none"> <li>CMO's actual costs of services as reported to DHFS</li> <li>Prescription/legend drugs</li> <li>Benefits paid associated with an inpatient hospital stay</li> </ul>

Eff. 4/1/00: If the recipient meets **all** of the following:

- Resides in a nursing home, or hospital.
- Is required to contribute to the cost of care.
- Is not reasonably expected to return home to live.
- A lien is filed on their home.

**All services listed above that were received on or after 4/1/00 may be recovered through the lien, except Family Care services which may be recovered as of 2/1/00.**